



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** J.M. Yurick Associates, Inc.

**File:** B-242138

**Date:** December 20, 1990

Sam Zalman Gdanski, Esq., for the protester.  
Kathleen A. Gilhooly, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

Protest that offerors were not competing on an equal basis because agency changed its position with regard to offeror's recruitment of government personnel after exclusion of the protester's proposal from the competitive range is denied where solicitation amendment did not materially change initial solicitation provisions regarding offerors' contacts with agency personnel for recruitment purposes.

### DECISION

J.M. Yurick Associates, Inc. protests request for proposals (RFP) No. F41689-90-R-0039, issued by the Department of the Air Force for caretaker operation services at Pease Air Force Base (AFB), New Hampshire.

We dismiss the protest without obtaining an agency report from the Air Force, since it is clear that the protest is without legal merit. 4 C.F.R. § 21.3(m) (1990).

Yurick protests that all offerors did not compete on the same basis, since the Air Force allegedly changed its position on whether offerors could contact base personnel after Yurick's proposal was excluded from the competitive range. According to Yurick, the RFP prohibited contacts with base personnel and this prohibition was emphasized at the pre-proposal conference. Yurick states that, in order to comply with this prohibition during preparation of its proposal, it requested in its newspaper employment advertisements that Pease AFB personnel, military and civilian, not apply for contract work. Yurick asserts that it did not receive a copy of amendment No. 2, which it asserts changed the RFP's terms to permit contact with current base employees for purposes of considering them for future employment, until after the Air Force notified it of its exclusion from the competitive range.

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yurick contends that it should be permitted to resubmit a proposal premised on its ability to factor in employment of Pease personnel.

Our review of the RFP, its amendments, and the pre-proposal conference record indicates that the RFP provisions relating to the offerors' consideration of employees at Pease AFB for employment were not materially changed by amendment No. 2. Although both the initial and revised RFP restricted offerors' contacts with Pease employees on Air Force property, both permitted recruitment of Pease AFB personnel through newspaper advertisements. Specifically, the "Notice of Source Selection" in the RFP, as originally issued, notified offerors that "CONTACTS ON PEASE AFB INSTALLATION TO OR WITH OTHER AIR FORCE PERSONNEL REGARDING THIS ACQUISITION ARE STRICTLY PROHIBITED" and that "[f]or information regarding soliciting employees in the matter of this acquisition, see Section H paragraphs 'RESTRICTION ON CONTRACTOR EMPLOYMENT' and 'OFFERS OF EMPLOYMENT'." The paragraph entitled "RESTRICTION ON CONTRACTOR EMPLOYMENT" provided that the contractor should not employ any United States government employee if the employment would create a conflict of interest or the appearance of a conflict of interest. The paragraph entitled "OFFERS OF EMPLOYMENT" encouraged offerors to use the United States Employment Services and its affiliated State Employment Service offices in meeting labor supply requirements. Although the RFP specifically prohibited offerors "from directly contacting activities and organizations . . . on the military reservation . . . for the purpose of soliciting employees . . . or making offers of employment," the paragraph also specified that "[t]his does not preclude advertisement of employment openings, or similar announcements to the general public . . ." Moreover, at the pre-proposal conference, there was the following question and answer:

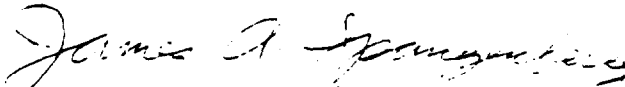
"2. During and since the last procurement some contractors have negotiated with certain people (Military and civilian) employed presently at Pease. If the negotiations have addressed only employment issues and are in full compliance with Section H, 'Restrictions on Contractor Employment' and 'Offers of Employment,' will these negotiations have any negative effect on the contractors chance of being awarded this contract?

"ANSWER: No."

Contrary to Yurick's allegation, amendment No. 2 did not materially change the RFP's terms regarding contacts with current employees at Pease AFB. The amendment merely clarified in the "Notice of Source Selection" that contacts on

Pease AFB installation were prohibited, and that the notice was not intended to deter prospective contractors from considering current Pease AFB employees for future employment under the proposed contract. The RFP's Section H paragraphs concerning "Restriction on Contractor Employment" and "Offers of Employment" remained unchanged.

Since Yurick has produced no evidence that offerors were not competing on an equal basis, the protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel